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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,702	12/17/2003	Thomas Grafenauer	03100137US	5695
7055 7590 09/28/2007 GREENBLUM & BERNSTEIN, P.L.C.			EXAMINER	
1950 ROLAND	CLARKE PLACE		CAJILIG, CHRISTINE T	
RESTON, VA 20191			ART UNIT	PAPER NUMBER
			3637	
			NOTIFICATION DATE	DELIVERY MODE
			09/28/2007	ELECTRONIC

#### Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)			
	10/736,702	GRAFENAUER, THOMAS			
Office Action Summary	Examiner	Art Unit			
	Christine T. Cajilig	3637			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
<ul> <li>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>					
Status					
1) Responsive to communication(s) filed on <u>04 September 2007</u> .					
2a) This action is <b>FINAL</b> . 2b) This action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
• closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4)⊠ Claim(s) <u>1,3-10 and 12-23</u> is/are pending in the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.					
6) Claim(s) <u>1,3-10 and 12-23</u> is/are rejected.					
7) Claim(s) is/are objected to.					
8) Claim(s) are subject to restriction and/or election requirement.					
Application Papers					
9) The specification is objected to by the Examiner.					
10) The drawing(s) filed on <u>17 December 2003</u> is/are: a) accepted or b) objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).					
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:					
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority documents have been received in Application No					
3. Copies of the certified copies of the priority documents have been received in this National Stage					
application from the International Bureau (PCT Rule 17.2(a)).					
* See the attached detailed Office action for a list of the certified copies not received.					
Attachment(s)		(07.0.440)			
1) ☑ Notice of References Cited (PTO-892)       4) ☐ Interview Summary (PTO-413)         2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)       Paper No(s)/Mail Date					
3) Information Disclosure Statement(s) (PTO/SB/08)	5) 📃 Notice of Informal P				
Paper No(s)/Mail Date <u>9/04/07</u> .	6) [] Other:				

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#### DETAILED ACTION

#### Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the

fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114,

and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the

previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 9/04/07 has been entered.

#### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 8, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson (US 2003/0079820 A1) in view of Olofsson et al. (US 6682254 B1).

Regarding claims 1 and 22, Palsson discloses a building board which has two mutually opposite longitudinal edges (2', 2" of Figure 2) and two mutually opposite transverse edges (2", 2<sup>iv</sup>, of Figure 6) running at right angles to the longitudinal edges, one longitudinal edge and one transverse edge in each case having a tongue (11, e respectively) and the opposite longitudinal edge and

transverse edge having a groove (13, h respectively) corresponding to the tongue, via which a plurality of building boards can be connected to one another and locked in the vertical direction in relation to one another, wherein the tongue on the longitudinal edge comprises a bevel (a), and the tongue and the groove on the longitudinal edge are designed such that two boards which are connected to one another at the longitudinal edges are also locked in a horizontal direction in relation to one another, wherein the groove (13) on the longitudinal edge (2") is bounded by a top lip (b) and a bottom lip (14), the bottom lip projects laterally beyond the top lip and has a concave recess (c) over the entire length, and the tongue has a convex underside (d) which corresponds to the recess, the bevel being conterminous with the convex underside of the tongue. Palsson does not disclose that the building board is made of OSB (oriented strand board), nor discloses that the tongue on the longitudinal edge comprises a recess adjacent the bevel. However, Palsson discloses that prior art floor boards can be made out of OSB (Par 0005). Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson to be made of OSB as this would provide a strong and durable material for a flooring system. Moreover, Olofsson et al. discloses a floor board (Figure 5) wherein a tongue (2) comprises a recess (6) adjacent a bevel (a). Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson to include a recess adjacent a bevel as taught by Olofsson et al. to be adjacent the bevel of Palsson to provide a cavity where excess glue can collect (Col 3, Ln 21-

28). Furthermore, the modification of a recess by Olofsson et al. being placed adjacent the bevel would have the bevel conterminous with both the recess and the convex underside of the tongue. The bevel (a) of Palsson constitutes as the entire upper surface of the tongue, as such, the placement of the recess as taught by Olofsson, which would be adjacent the bevel, would place the recess as being conterminous with the bevel in addition to being conterminous with the convex underside of the tongue.

Regarding claim 8, Palsson discloses a building board, comprising a first longitudinal edge (2') having a tongue (11); a second longitudinal edge (2'') opposite the first longitudinal edge and having a groove (13) bounded by a top lip (b) and a bottom lip (14); a first transverse edge (2") adjacent to the first and second longitudinal edges and having a tongue (e); a second transverse edge (2<sup>IV</sup>) adjacent to the first and second longitudinal edges and having a groove (h); and an upwardly projecting extension (15) on the bottom lip of the second longitudinal edge that locks interconnected boards in a horizontal direction in relation to one another, wherein a front edge of the tongue of the first longitudinal edge comprises a bevel (a), the bottom lip of the second longitudinal edge has a concave recess (c) over its length, and the tongue of the first longitudinal edge has a convex underside (d) which corresponds to the concave recess, but does not disclose a recess formed in the tongue adjacent to the bevel. However, Olofsson et al. discloses a floor board (Figure 5) wherein a tongue (2) comprises a recess (6) adjacent a bevel (a). Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify

the floor board of Palsson to include a recess formed in the tongue of the first longitudinal edge adjacent to the bevel as taught by Olofsson et al. to provide a cavity where excess glue can collect (Col 3, Ln 21-28).

Regarding claim 16, Palsson already modified by Olofsson et al. discloses the structure discussed above and further discloses a bevel (g) on the top lip of the second longitudinal edge (2") which corresponds or is complementary to the bevel (a) of the tongue of the first longitudinal edge (2').

Claims 3, 6, 9, 10, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson in view of Olofsson et al. as applied to claims 1 and 8 above, and further in view of Thiers (US 2002/0056245 A1).

Regarding claim 3, Palsson already modified by Olofsson et al. discloses the structure as discussed above, but does not disclose that the longitudinal edges and the transverse edges have a chamfer on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards. However, Thiers discloses a floor board (2) wherein the longitudinal edges and the transverse edges have a chamfer (15, Par 0066) on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards as shown in Figure 5. Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. so that the longitudinal edges and the transverse edges have a chamfer on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards of Palsson already modified by Olofsson et al. so that the longitudinal edges and the transverse edges have a chamfer on their top side, with the result that a V-shaped joint is formed at the connecting location between two board as taught by Theirs to provide a panel that can be easily rotated in

relation to one another (Par 0067) as well as provide an aesthetically pleasing surface along the upper edges of the board.

Regarding claim 6, Palsson already modified by Olofsson et al. discloses the structure as discussed above, and further discloses that the top side of the board has a decorative layer (3) but does not disclose that the decorative layer (3) on the top side of the board is provided with markings along which the board is capable of being fastened on the beams by means of screws or nails. However, Theirs discloses a floor board (2) wherein the top decorative layer (23) has markings in the form of imprinted wood patterns, along which, screws or nails could obviously be fastened. Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have markings on the decorative, along which, screws or nails could obviously be fastened as taught by Theirs to provide a decorative surface that replicates wood.

Regarding claim 19, Palsson already modified by Olofsson et al. discloses the structure as discussed above, and further discloses an underside of the top lip (b) comprises a beveled edge (g) corresponding to the bevel, but does not discloses that the longitudinal edges and transverse edges have a chamfer on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards. However, Thiers discloses a floor board (2) wherein the longitudinal edges and the transverse edges have a chamfer (15, Par 0066) on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards as shown in Figure 5. Therefore, it

would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. so that the longitudinal edges and the transverse edges have a chamfer on their top side, with the result that a V-shaped joint is formed at the connecting location between two board as taught by Theirs to provide a panel that can be easily rotated in relation to one another (Par 0067) as well as provide an aesthetically pleasing surface along the upper edges of the board.

Regarding claims 9 and 10, Palsson already modified by Olofsson et al. discloses the structure discussed above, but does not disclose a first chamfer on a top side of the top lip of the second longitudinal edge and a second chamfer disposed above the tongue of the first longitudinal edge, resulting in a V-shaped joint formed by connecting boards. However, Thiers discloses a floor board (2) wherein the first and second longitudinal edges have a first and second chamfer (15, Par 0066), respectively, on their top side, with the result that a V-shaped joint is formed at the connecting location between two boards as shown in Figure 5. Therefore, it would have been obvious to one having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have a first chamfer on a top side of the top lip of the second longitudinal edge and a second chamfer disposed above the tongue of the first longitudinal edge, resulting in a V-shaped joint formed by connecting boards as taught by Theirs to provide a panel that can be easily rotated in relation to one another (Par 0067) as well as provide an aesthetically pleasing surface along the upper edges of the board.

Claims 4, 5, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson in view of Olofsson et al. as applied to claims 1 and 8 above, and further in view of Kornicer et al. (US 2003/0035921 A1).

Regarding claims 4, 5, 15, and 17, Palsson already modified by Olofsson et al. discloses the floor board above, but does not disclose that the board comprises four layers, in which case, in the two outer layers, a longitudinal direction of strands is oriented predominantly in the longitudinal direction of the board, and in the two inner layers, a longitudinal direction of other strands is oriented predominantly in the transverse direction of the board or that the board comprises strands glued with an isocyanate resin. However, Kornicer et al. discloses a multi-layered oriented strand board (10) has four layers, in which case, in the two outer layers (12, 16), a longitudinal direction of strands is oriented predominantly in the longitudinal direction of the board, and in the two inner layers (14, 15), a longitudinal direction of other strands is oriented predominantly in the transverse direction of the board as shown in Figure 1, and comprises strands glued with isocyanate resin (Par 0029-0035). Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have four layers, in which case, in the two outer layers, a longitudinal direction of strands is oriented predominantly in the longitudinal direction of the board, and in the two inner layers, a longitudinal direction of other strands is oriented predominantly in the transverse direction of the board and the

strands glued with isocyanate resin as taught by Kornicer et al. to provide a material that is better suited for use as flooring in damp environments (Par 0018).

Claims 7, 12-14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson in view of Olofsson et al. as applied to claims 1 and 8 above, and further in view of Hall (US 347,425).

Regarding claim 7, Palsson already modified by Olofsson et al. discloses the floor board above, but does not disclose that the bottom lip (14) of the groove, on the longitudinal and/or transverse side, has depressions, which are spaced apart parallel to one another, for accommodating a nail or screw head. Hall, however, discloses a cladding wherein a bottom lip (B) of a groove comprises depressions (c), which are spaced apart parallel to one another, for accommodating a nail or screw head. Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have the groove, on the longitudinal and/or transverse side, include depressions, which are spaced apart parallel to one another, for accommodating a nail or screw head as taught by Hall to have preformed holes to fix the floor board in place.

Regarding claims 12-14, Palsson already modified by Olofsson et al. discloses the structure as discussed above and further discloses that the groove (h) of the second transverse edge comprises a top lip (24) and a bottom lip (10<sup>IV</sup>), but does not disclose a plurality of spaced apart recesses provided along the

bottom lip of the second longitudinal edge nor that the bottom lip of the second transverse edge having a plurality of spaced apart recesses, and wherein the plurality of recesses of the second longitudinal edge and the second transverse edge are configured to accommodate countersunk nail heads or screw heads. Hall, however, discloses a cladding wherein a bottom lip (B) of a groove comprises a plurality of spaced apart recesses(c) configured to accommodate countersunk nail heads or screw head. Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have the bottom lips of each of the groove on the longitudinal and transverse side, have a plurality of spaced apart recesses configured to accommodate countersunk nail heads or screw head as taught by Hall to have preformed holes to fix the floor board in place. Furthermore, it has been held that a mere duplication of parts, such as the duplication of the recesses, has no patentable significance unless a new and unexpected result is produced. A duplication of parts is generally recognized as being within the level of ordinary skill in the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1955).

Regarding claim 20, Palsson already modified by Olofsson et al. discloses a building board comprising two mutually opposite longitudinal edges (2', 2" of Figure 2) and two mutually opposite transverse edges (2", 2 <sup>iv</sup>, of Figure 6) running at right angles to the longitudinal edges, one longitudinal edge and one transverse edge in each case having a tongue (11, e respectively) and the opposite longitudinal edge and transverse edge having a groove (13, h

respectively) corresponding to the tongue, via which a plurality of building boards can be connected to one another and locked in the vertical direction in relation to one another, wherein the groove on the longitudinal edge is bounded by a top lip (b) and a bottom lip (14), the bottom lip projects laterally beyond the top lip and has a concave recess (c) over the entire length, the tongue has a convex underside (d) which corresponds to the recess, but does not discloses that the bottom lip has a plurality of spaced apart depressions configured to accommodate a countersunk nail head or screw head. Hall, however, discloses a cladding wherein a bottom lip (B) of a groove comprises a plurality of spaced apart recesses(c) configured to accommodate countersunk nail heads or screw head. Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to have the bottom lips of each of the groove on the longitudinal and transverse side, have a plurality of spaced apart recesses configured to accommodate countersunk nail heads or screw head as taught by Hall to have preformed holes to fix the floor board in place.

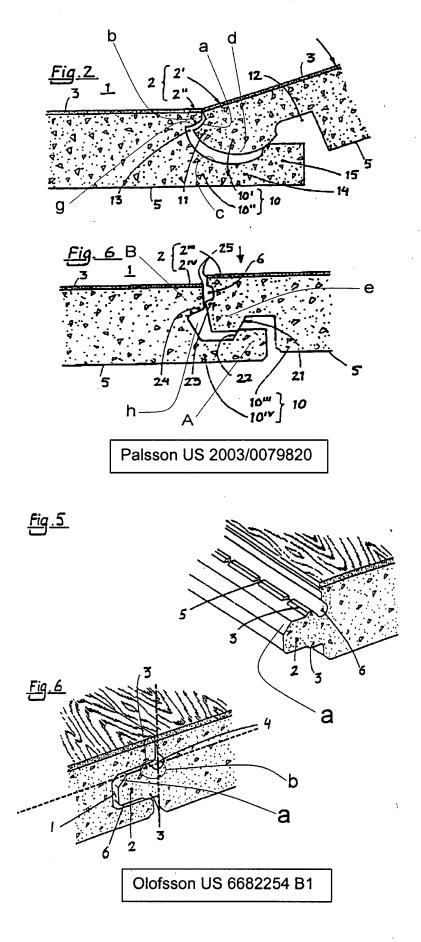
Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson in view of Olofsson et al. as applied to claim 8 above, and in further view of Smid et al. (US 6012255).

Regarding claim 18, Palsson already modified by Olofsson et al. discloses the floor board above, but does not disclose markings provided on a top side of the board and adapted to correspond to spacing between beams. However,

Smid et al. in Figures 2A-2F discloses building material with a plurality of marks (12) corresponding to spacing of supports on which the building material would be mounted. Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to include markings on a top side of the board and adapted to correspond to spacing between beams as taught by Smid et al. to provide a visual indicator for a worker of where to fasten the board (Abstract).

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palsson in view of Olofsson et al. as applied to claims 1 and 8 above, and in further view of Schneider (US 6,385,936 B1).

Regarding claims 21 and 23, Palsson already modified by Olofsson et al. discloses the floor board above, but does not disclose that the bevel is a flat or planar surface. However, Schneider in Figure 3 discloses a floor board having a tongue (30) with a flat or planar bevel (46) in order to facilitate the joining process (Col 2, Ln 29-31). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the Applicant's invention to modify the floor board of Palsson already modified by Olofsson et al. to further have a bevel that is flat or planar as taught by Schneider to provide a tapered surface that would facilitate assembly.



#### **Response to Arguments**

Applicant's arguments, see pages 8-9 of Remarks filed 9/04/07, with respect to the drawing objection and pages 9-10 of Remarks filed 09/04/07 with respect to the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection on claim 18 has been fully considered and are persuasive. The drawing objection and the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection on claim 18 have been withdrawn.

Applicant's arguments with respect to claims 8 and 16, and with respect to claim 1 in view of Palsson have been considered but are moot in view of the new ground(s) of rejection.

With respect to Applicant's argument for claims 1, 2, and 11 rejected under 35 U.S.C. 103(a) as unpatentable over Palsson in view of Olofsson:

Applicant argues, "Palsson does not disclose a tongue having a convex underside and a bevel" and that the "element 'a' [of Palsson] does not constitute a bevel, as recited in the claimed invention, because it exhibits a wavy (i.e., not flat or planar) contour." Furthermore, Applicant defines the term bevel as "'the inclination that one line or *surface* makes with another when note at right angles,' or 'a surface that does not form a right angle with adjacent surface.'" (emphasis added). Even by Applicant's own definitions, the term bevel does not require a flat or planar contour. Further element "a" of Palsson, as annotated in Palsson, fits the definition of a bevel as offered by Applicant. While Applicant's drawings may show a bevel "b" including flat or planar surface, such limitations are not

recited in the claim. For all of these reasons, element "a," although not flat or planar is nevertheless a bevel.

Applicant further argues, that Olofsson does not disclose that the tongue comprises a recess and "Olofsson does not disclose a recess adjacent to a bevel." However, as shown in circled portion (b) of Olofsson, the tongue of Olofsson indeed comprises a recess. Moreover, the recess in Olofsson may include the entire region extending before the right side of "a" and the left most edge of the top planar surface. Thus Olofsson discloses a recess adjacent a bevel "3". Further, Palsson already discloses the bevel "a," while Olofsson teaches a recess "6," the recess (6) of Olofsson being formed at the intersection of a vertical side wall and the tongue as shown in the annotated region (b). Modifying Palsson to include recess "6" of Olofsson would place recess "6" adjacent to the bevel "a" of Palsson, thus reading on the claimed limitations.

Applicant further argues, "modifying Palsson by adding such a guiding wedge 3 would render Palsson unsatisfactory." However, the rejection does not incorporate the wedge 3 of Olofsson into Palsson. The reference of Olofsson is used only as a teaching for a recess as the reference of Palsson already discloses all the limitations required by the claim for the exception of the recess.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed

invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The reconstruction is proper because Olofsson indeed teaches a recess, which is formed in the tongue and is adjacent a bevel, for the purpose of collecting excess glue (Col 3, Ln 21-28 of Olofsson et al.)

In response to Applicant's argument for claims 12-14 and 20 rejected under 35 U.S.C. 103(a) as unpatentable over Palsson in view of Hall:

Applicant argues "Hall does not compensate for the deficiencies of Palsson with respect to claim 20 because Hall does not disclose a plurality of spaced apart depressions in a bottom lip that bounds a groove." Applicant further argues "Hall's flange B is not a bottom lip that bounds a groove that corresponds to a tongue." Furthermore, Applicant states that Hall has a "lip or flange portion B" and that the "flange B comprises holes c for screws or nails." Hall indeed discloses a bottom lip "B" with a plurality of spaced apart depressions "c" so that fastener heads can be flush with the top surface of the bottom lip "B." Moreover, modifying Palsson, which already has a groove in the bottom lip, to include a plurality of spaced apart depressions "c" as taught by Hall would place the spaced apart depressions in the bottom lip of Palsson that bounds a groove, thus reading on the claimed limitations.

Page 16

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pairdirect.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (tollfree). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CTC/ 9/18/07

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